ACCEPTANCE

By

Group 7

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INTRODUCTION:

In the ordinary course of life, agreements are constantly made,some in words, others in silence, and many through actions. Yet not every promise binds, and not every agreement holds legal force. What transforms a mere offer into an obligation is not just the intention to promise, but the response it receives. That response,the point where one mind meets another,is what gives life to a contract. Without it, the law has nothing to enforce.

Let us first of all consider what a contract is**.**
A contract is an agreement which the law will enforce or recognize as affecting the legal rights and duties of the parties. It is a promise or set of promises which the law will enforce. In the case of **Kano Air v. Tarfa,** Galadinma J.C.A held that

> "a contract must be an agreement which is legally binding on the parties to it, and which, if broken, may be enforced by action in court against the defaulting party."

A valid contract must require the following essentials: Offer, Acceptance, Consideration, and Intention to create legal relations. For the purpose of this work, acceptance will only be considered.

Acceptance is the unqualified agreement by the offeree (the person to whom an offer is made) to the terms of the offer, creating a binding contract when communicated to the offeror. Essentially, acceptance signifies a "meeting of the minds" consensus ad idem—where both parties agree to the terms of the exchange without equivocation or ambiguity. What constitutes the acceptance of an offer was given a comprehensive definition by Tobi J.C.A in **Orient Bank (Nig) Plc v. Bilante International Ltd.**

In a bilateral contract, the element of acceptance is crucial because it signifies the mutual agreement between two parties to be bound by the terms of the contract. This agreement is established when the offeree (the party receiving the offer) communicates their unconditional agreement to the offeror (the party making the offer). This exchange of promises is what makes the contract bilateral, with both parties obligated to fulfill their respective commitments.

Before we move into discussing what are the valid modes of acceptance, let us briefly look at what does not constitute a valid mode of acceptance.

(i) Counter Offer:

This was elaborated by Tobi J.C.A in **Orient Bank Nig. Plc v. Bilante International Ltd:**

> "For an acceptance to be operative, it must be plain, unequivocal, unconditional and without variance of any sort between it and the offer. The offeree must unreservedly assent to the exact terms proposed by the offeror. A counter offer or a qualified acceptance of an offer cannot give rise to a binding agreement between the parties."

(ii) Conditional Acceptance:

A conditional acceptance is not a valid or binding acceptance. Any acceptance which is made subject to a condition cannot create a binding contract until that condition has been met or fulfilled.Thus, in Winn v. Bull, it was held that in the absence of a formal contract, the agreement was not binding.

(iii) Cross Offers:

A cross offer does not constitute a valid acceptance. There has to be consensus ad idem. This is discussed in **Tinn v. Hoffmann.**

(iv) Acceptance in Ignorance of the Offer:

An acceptance made in ignorance of the offer is not an acceptance at all. This is discussed in the cases of **Gibbons v. Proctor and R v. Clarke.**

When an act coincides with the requirements contained in an offer, it is not an acceptance if the person doing the act was not aware of the existence of the offer at the time he performed the act. However, once this prior knowledge exists, motive or intention is irrelevant

An acceptance must be communicated otherwise it will not be valid . Not only that , the communication must be in such a form that it can be objectively determined.

We shall now discuss the valid modes of acceptance which are ::

(a) by the conduct of the parties

(b) by their words

(c) by documents that have passed between them

(d) by post

A. ACCEPTANCE BY CONDUCT OF THE PARTIES

Acceptance by conduct refers to situations where an individual's actions, rather than their words, demonstrate their agreement to the terms of an offer. This type of acceptance hinges on the idea that a person's behavior can be just as binding as a verbal or written agreement. The key to identifying acceptance by conduct lies in observing actions indicating acceptance—whether these actions clearly show an intention to agree to the offer's conditions.

In Orient Bank (Nig.) Plc. v. Bilante International Ltd, Tobi J.C.A, as he then was, described the various ways in which acceptance may be manifested, one which acceptance by conduct is one of them (the conduct of the parties).

Acceptance by conduct occurs when the offeree clearly performs an act with the intention of accepting the offer.

In contract law, this type of acceptance allows for the formation of contracts even when explicit acceptance may not have been stated. Parties can enter into legally binding agreements by demonstrating their intention to accept an offer through their conduct or actions.

This type of acceptance comes in various forms within contract law. Here is an example:

- Continuing to use a service after being informed of changes in terms and conditions can imply acceptance of those changes

For conduct to constitute acceptance, it must fulfill two requirements: awareness and knowledge. The conduct must be clearly done, mental or internal acceptance is not enough.

Generally, the offeree's silence cannot equal acceptance. Silence is not clear enough a response to lead to a valid acceptance (**Felthouse v Bindley (1862)** (Court of Common Pleas)).

In Felthouse v. Bindley, an uncle offered to buy his nephew's horse, stating that silence would mean acceptance. The nephew intended to sell the horse but did not reply. The horse was mistakenly sold at auction by Bindley. The court held that there was no binding contract, as silence cannot amount to acceptance. Communication of acceptance is essential in contract law.

Moreover, the person performing the act must be aware of the offer in the first place. This principle was established in Fitch v. Snedaker, where the plaintiff gave information that led to solving a murder but was unaware of a reward at the time. He later tried to claim the reward. The court ruled against him, holding that you must know of an offer to accept it. A reward cannot be claimed if the act was done without knowledge of the offer.

Acceptance by conduct, which is one of the ways in which acceptance may be manifested, is an area where care must be taken, as a person's conduct may be mistaken as acceptance even without actual knowledge of the offer.

Legal Effect of Acceptance by Conduct

Acceptance by conduct is a legally binding form of agreement. Even without a signature or verbal consent, courts may recognize a contract if one party performs according to the offer's terms and the other party knowingly benefits from that performance.

The enforceability hinges on several core elements:

- Clear conduct that reflects the terms of the offer.
- Knowledge of the offer by the party performing the conduct.
- Mutual intent to enter a legal relationship.

For example, if a vendor delivers goods per an unsigned contract and the recipient uses the goods without objection, this may constitute acceptance by conduct. The key is that the conduct aligns with the offer and is not merely coincidental.

Case Examples

1.In the 2015 case of **Reveille Independent LLC vs. Anotech International,** the television company sued the UK cookware company for breach of contract. Reveille claimed that it had licensed intellectual property (IP) rights to Anotech and agreed to promote their products on their TV show Master Chef, in exchange for an agreed-upon sum.

The case hinged upon a signed deal memo that was marked with "brand conflict with Gordon Ramsay to be concluded and other minor amendments." This document was not signed by both parties and stated within that it would thus not be legally binding.

Negotiations between the party broke down, so this memo was never replaced with an officially signed agreement. Reveille then notified the defendant that the memo constituted a contract and sued for breach of contract for failure to pay.

In response, the defendant claimed that because the deal memo was not signed, no legally binding contract was in effect. They noted that the contract was subject to a condition precedent as indicated on the original deal memo.

The court determined that the memo constituted a binding contract for the reason of contract acceptance by conduct. In effect, the condition precedent was waived by the defendant's actions. The court further noted that the defendant had completed the services in concert with the written contract terms. The defendant also paid submitted invoices

from the plaintiff, which was another factor establishing acceptance by conduct. The court found that the condition precedent was not valid because both parties knew it could not be met.

Other cases are

2.**Brogden v. Metropolitan Railway Co. (1877):** Even without formal execution of a contract, the court found a binding agreement due to the parties' ongoing business under the proposed terms.

3.**Empirnall Holdings Pty Ltd v. Machon Paull Partners Pty Ltd (1988):** The court upheld a contract based on conduct where one party carried out services while the other benefited from them.

Communication of Acceptance by Conduct

While conduct can serve as acceptance, communication may still play a role. The conduct must occur in a context where the other party understands it as acceptance. If performance begins without notifying the offeror, a dispute could arise over whether a contract was actually formed.

For example:

In business dealings, sending a confirmation email after performing the first step of a contract may help establish the agreement.

A party must not act in a way that misleads the offeror into thinking the offer was rejected.

The law prioritizes mutual understanding, not just isolated actions.

Silence and Inaction in Acceptance by Conduct

In general, silence or inaction does not constitute acceptance. However, there are limited circumstances where it might:

Past dealings: If two parties have a history of accepting terms without verbal or written confirmation, silence may be interpreted as assent.

Custom or usage in trade: In some industries, certain behaviors are accepted as signifying agreements.

Unilateral contracts: If an offer is made for a reward or performance, the offeree may accept by completing the act, with no further communication required.

Still, courts are cautious about finding acceptance in silence, especially when consumer protection or fairness is at stake.

Exceptions

1.In limited circumstances silence can equal acceptance (**Rust v Abbey Life Insurance Co (1979) (CoA)**). Rust had some extra money after selling her hotel and wanted to invest the money in Abbey Life property bonds. She filled in an application for the investment and wrote a cheque for the investment amount which she then sent to Abbey Life. Rust received the investment policy documents which she should have signed and returned. She failed to do so and after several months, unhappy with her investment, she tried to argue that as she had never signed and agreed to the policy she could claim her money back. The court held that Rust's silence and previous conduct indicated acceptance even though she hadn't returned the signed policy.

In **Dresdner Kleinwort Limited & Anor v Attrill & Ors (2013) (CoA)** a company announced that it was offering its employees bonuses and that they had approved a 'guaranteed bonus pool' to pay these bonuses. Later, they tried to reduce the bonuses to 90% less than what was originally promised. The court said that there was no need for the employees to have 'accepted' the original offer in order for the company to be bound by it. The company had the contractual power to give bonuses without needing acceptance

of them under the contracts of employment with its employees. By announcing the bonuses, they also implicitly waived the need for acceptance.

2.Exceptions To Certainty Of Acceptance

However, there will be occasions where an otherwise vague or ambiguous phrase may be given specific meaning by the courts. To give effect to the intentions of the parties, the court can look to standard commercial practice or the previous dealings of the parties to define any ambiguous term. The courts should interpret words in an agreement in such a way as to preserve, rather than destroy, its subject matter (**Hillas v Arcos (1932)).**

Hillas had purchased timber from Arcos. The agreement contained an option to purchase an extra 100,000 units at a discounted rate with the price to be agreed the following year. Arcos refused to honour this, arguing that the term was too ambiguous to be enforceable, it was simply an agreement to agree on a price. However, the court disagreed, the term (to set a discounted rate/ price) was objectively certain enough to be enforceable. The ambiguity as to price was because the price of wood fluctuated over time, it was not enough to destroy the agreement all together.

An objective reference to determine the meaning of any phrase is vital. In **Baird Textile Holdings v Marks & Spencer (2001) (CoA)** the meaning of 'reasonable' quantity and price could not be determined by the court because they had no objective criteria by which to judge it. The agreement between the parties had never been formally set down and therefore it was not possible to interpret what the parties common intention was based on that term. The phrase was too ambiguous to create a contract.

B. ACCEPTANCE BY WORDS (ORAL OR WRITTEN)

One of the recognized and most common forms of acceptance is acceptance by words, either orally or in writing.Acceptance by words involves the use of clear and definite language, either spoken or written, to convey agreement to the offer. This mode of acceptance is also known as express acceptance because it directly and unmistakably

conveys assent. It contrasts with implied acceptance, where conduct or actions signify agreement.

For instance, where A offers to sell his motorcycle to B for ₦400,000, and B says, “I accept the offer and will pay by Friday,” this is oral acceptance. Similarly, if B sends a written reply to A’s offer saying, “I agree to buy the motorcycle for ₦400,000,” this is written acceptance.

The importance of clear and unambiguous expression of assent in acceptance by words cannot be overemphasized. First, it ensures legal certainty. Contracts are based on mutual agreement; therefore, clear acceptance eliminates any doubt about whether both parties are indeed bound by the agreement. Ambiguous or vague expressions such as “I might consider it” or “I’m thinking about it” do not amount to valid acceptance because they do not show a firm commitment.

Also, a clear expression of assent helps in avoiding disputes. Where the offeree's words are direct and unmistakable, it becomes easier to prove that a contract was concluded. This is especially important in legal proceedings where the existence or terms of a contract are in dispute. Courts are more likely to enforce agreements where acceptance is clearly and unequivocally communicated.

Furthermore, clear expression serves as evidence of agreement. If the parties later disagree or one party denies the existence of a contract, written or oral acceptance can be used to establish the fact that an agreement was indeed reached. This is particularly true in business transactions, where documentation plays a key role in contractual relations.

The law has laid down that for acceptance to be valid, it must be communicated in a manner recognized by law. The case of **Hyde v. Wrench (1840)** demonstrates that acceptance must be definite and clear. In that case, the defendant offered to sell a farm for £1,000. The plaintiff responded with a counter-offer of £950, which was rejected. The plaintiff then tried to accept the original offer of £1,000, but the court held that the original offer had lapsed due to the counter-offer, and no contract existed. This case illustrates the principle that acceptance must be clear, unambiguous, and unconditional.

It is also important to note that silence does not amount to acceptance. In **Felthouse v. Bindley (1862) 11 CBNS 869,** an uncle wrote to his nephew offering to buy a horse and said, "If I hear no more about it, I shall consider the horse mine." The court held that silence could not constitute acceptance. There must be a positive act of acceptance through words or conduct.

In conclusion, acceptance by words—whether oral or written—is a direct and recognized method of contract formation. It is crucial that the words used are clear, definite, and unqualified, showing a genuine intention to be bound by the terms of the offer. A clear expression of assent not only finalizes the agreement but also protects both parties by providing legal certainty and reducing the risk of dispute. The courts will uphold such contracts where acceptance is clearly and unequivocally expressed

C. ACCEPTANCE BY DOCUMENTS

Acceptance by documents refers to the act of accepting an offer through written or documented means. This form of acceptance is typically evidenced by documents such as: Signed contracts, Letters of acceptance,Invoices or receipts, Purchase orders.

Acceptance by documents provides a clear and tangible record of the agreement, helping to prevent disputes and establish the terms of the contract.

Acceptance by Documents Passing Between the Parties

Acceptance by documents passing between the parties is a crucial concept in contract law, particularly in the context of offer and acceptance. It refers to the situation where one party's acceptance of an offer is evidenced by documents exchanged between the parties, such as signed agreements, invoices, or other forms of written communication. This form of acceptance is significant because it provides tangible proof of the agreement between the parties.

Forms of Documented Acceptance

1. Signed Agreements: When both parties sign a contract or agreement that outlines the terms of the deal, it serves as strong evidence of acceptance. The act of signing indicates that both parties have read, understood, and agreed to the terms

2. Invoices Acknowledged: In commercial transactions, an offer might be made through an offer to sell goods or services, and acceptance can be evidenced by the buyer acknowledging or accepting an invoice for those goods or services. This acknowledgment can be in the form of a signature or a written confirmation.

3. Emails and Letters: In today's digital age, acceptance can also be communicated through emails or letters that clearly indicate agreement to the terms of an offer. If an offeree responds to an offer with an email or letter that accepts the terms without reservation, it constitutes acceptance.

4. Purchase Orders: In business transactions, a purchase order sent by a buyer to a seller can serve as acceptance of the seller's offer to supply goods or services at specified terms.

The case of **Currie v. Misa (1875)** is a seminal example of acceptance by document. In this case, Mr. Misa purchased bills of exchange from a merchant, Lizardi, and directed Misa to make payment to the claimant bank, Glyn, Mills, Currie & Co. Misa made payment by cheque, which was accepted by the bank. The court held that the bank's acceptance of the cheque constituted valid consideration for the bills of exchange. The court's decision in Currie v. Misa established that a written document can serve as evidence of acceptance, creating a binding contract between parties.

A written document, such as a contract or agreement, outlines the terms and conditions of the agreement between parties. When a party signs or accepts a written document, they indicate their intention to be bound by the terms outlined in the document.

Obligations by written document imply that the written document should clearly outline the terms of the agreement. This includes the parties involved, the subject matter, and the terms and conditions of the agreement. Secondly, one party must make an offer, and the other party must accept the terms of the offer. Also, there must be valid consideration, such as a benefit gained or detriment suffered.

Exceptions to Acceptance by Document

While acceptance by document is a widely accepted principle, there are exceptions to consider:

1. Fraud or Misrepresentation: If a party is induced to accept a document through fraud or misrepresentation, the contract may be voidable.

2. Undue Influence: If a party is subject to undue influence or coercion, their acceptance of a document may not be considered valid.

3. Lack of Capacity: If a party lacks the capacity to enter into a contract, their acceptance of a document may not be binding.

In conclusion, a written document can serve as evidence of acceptance, creating a binding contract between parties. By understanding the principles outlined in this case, parties can create valid contracts that are enforceable by law. Written documents provide a clear record of the agreement, reduce the risk of disputes and misunderstandings, and serve as a basis for enforcing contractual obligations.

D.ACCEPTANCE BY POST

Acceptance by post is one of the various forms of acceptance that we have. In contract law, acceptance by post (also known as the postal rule) is generally valid upon posting the acceptance, not upon receipt by the offeror. This means that once the offeree places a properly addressed and stamped letter of acceptance in the mail, the contract is formed, even if the offeror never actually receives the letter or receives it after a significant delay. The postal rule is a contract principle that governs situations in which acceptance is not made in person and where the contract or offer does not specify the method and timing of acceptance. In summary, the postal rule dictates that acceptance of an offer made by letter and sent by post is effective upon postage of the letter. This can cause problems, as this position will be maintained even if the letter is delayed or lost in the post. The postal rule generally in contract law means that when you accept an offer by post (mail), the

acceptance takes effect as soon as you post the letter, not when the person receives it. In simpler words: If someone offers you a deal, and you send back your "yes" in a letter, the deal is officially accepted the moment you drop the letter in the mailbox, even if the other person hasn't received it yet.

Principles of Postal Rule in Contract Law

There are several principles applicable to the postal rule as a model of acceptance in contract law.

1. Acceptance is effective once the letter is posted. As soon as the acceptance letter is properly posted, a binding contract is formed. It doesn't matter if the letter is delayed, lost, or never arrives. For example, if you drop your acceptance in a mailbox, the contract is formed at that moment. The core principle is that the acceptance is binding the moment it is placed in the postal system, not when it arrives at the offeree's address.

This first principle applies to the case of **Adams v. Lindsell** (1818). The facts of the case were that Lindsell (the defendant) wrote to Adams (the claimant) offering to sell wool, and asked for a reply "in the course of post." Adams received the letter and posted his acceptance the same day. However, due to a postal delay, Lindsell didn't get the acceptance when expected. Thinking Adams wasn't interested, Lindsell sold the wool to someone else. Adams sued for breach of contract. The issue was: was there a binding contract when Adams posted the acceptance, even though Lindsell hadn't received it yet? Yes. The court held that the contract was formed when Adams posted the acceptance letter, not when Lindsell received it.

2. The postal rule only applies to acceptance—not to offers or revocations. Offers or cancellations (revoking an offer) must be received to be valid. Only acceptance gets the special rule.

For instance, if Baola sends an offer and then wants to cancel it, the cancellation must reach Xinnuan before Xinnuan posts their acceptance.

This can be seen in the decided case of **Byrne v. Van Tienhoven (1880).** The facts were that Van Tienhoven sent an offer from Cardiff to New York. A week later, he sent a

revocation, but before it reached Byrne, Byrne had already posted an acceptance. It was held by the court that the revocation was not effective because Byrne had already accepted the offer by post. The crux here is that revocations must be received to be valid — postal rule doesn't apply to revoking offers.

3. The acceptance must be correctly addressed and stamped, and it must be properly posted, meaning it has been handed over to the postal authorities.

This principle could be seen in the case of **Re London & Northern Bank**, ex parte Jones (1900). In the case, a letter of acceptance was handed to a postman who was not authorized to collect mail. The court held that there was no valid posting, so acceptance was not effective.

Lesson: The postal rule only works when the letter is properly posted through the correct postal system.

The postal rule was first established in the case of **Adams v. Lindsell (1818)**. In this case, the court held that the plaintiff was entitled to damages because the defendant sold the wool to someone else before receiving the plaintiff's acceptance. The court ruled that acceptance was complete when the letter was posted, and the defendant was bound by the contract. This decision set a precedent for future cases involving acceptance by post.

Exceptions to Postal Rule in Contract Law

It is to be noted that we also have several exceptions to the postal rule in the law of contract. In simpler words, an exception is something that does not follow the general rule. It is a special case where the usual rule does not apply. For example, under the postal rule, acceptance is complete once a letter is posted. An exception can be that if the offer says "acceptance must be received," then posting is not enough — it must actually be received. Moving on, we have various exceptions such as:

1. When the acceptance is communicated through methods like telephone, telex, or email, the postal rule generally does not apply.

This was enforced in the case of **Entores Ltd v. Miles Far East Corp (1955**). In the case, Entores (UK) sent acceptance by telex to Miles (in the Netherlands). Miles later argued there was no contract since they didn't see it in time. The court ruled that acceptance by telex is only valid when received. Unlike postal letters, telex is instant communication. So, the postal rule does not apply.

2. When the offeror explicitly states that acceptance is not effective until received, thus avoiding the postal rule.

A case that applies to this is **Holwell Securities Ltd v. Hughes (1974).**

Hughes offered to sell property and required acceptance by "notice in writing." The offeree, Holwell, posted a letter of acceptance, but it was never delivered. They argued the postal rule should apply. The court rejected this, saying the offer required actual notice. Therefore, acceptance had to be received, not just posted.

3. When the acceptance letter is not properly posted. If the letter is incorrectly addressed, not stamped, or handed to the wrong person, it's not valid.

The case of **Re London & Northern Ban**k, ex parte Jones (1900) applies to this. Jones gave an acceptance letter to a postman who was not allowed to collect mail. The letter never entered the official postal system. The court held that acceptance was not valid because proper posting means using a mailbox or authorized post office worker. If not correctly posted, the postal rule won't work.

4. When a rejection is sent by the offeror before the acceptance of the offeree. If the offeree sends a rejection letter that arrives before the acceptance letter, the offer is considered rejected, even if the acceptance is later received.

The case of **Hyde v. Wrench (1840**) applies to this scenario. Wrench offered to sell his farm to Hyde for £1,000. Hyde replied with a counter-offer of £950, which acted as a rejection of the original offer. Wrench rejected the £950. Hyde then tried to accept the

original £1,000 offer. The court held that the original offer was no longer valid after the counter-offer. A counter-offer kills the original offer, making it unavailable for later acceptance. This re-established the exception that once rejected, an offer cannot be revived by later acceptance unless re-offered.

5. When it is unreasonable to use the post in a contract. If it's not reasonable to use post (e.g., urgent offers, or parties close by), the postal rule won't apply.

The case of **Henthorn v. Fraser** (1892) is applicable to this. Fraser made an offer to Henthorn in person. Henthorn lived in a different town and posted an acceptance. Fraser tried to revoke the offer before receiving the letter. The court ruled postal rule applied because distance made posting reasonable. But the case made clear: if posting is unreasonable, postal rule won't apply.

6. In **Holwell Securities v. Hughes (1974),** the court held that the postal rule doesn't apply when the offer's terms require the acceptance to reach the offeror. In this case, the offer specified that acceptance had to be "by notice in writing," and the acceptance was posted but never reached the defendant. The court ruled that the postal rule didn't apply, and there was no contract.

7. The postal rule is not absolute and can be excluded by the offeror. If the offeror specifies that acceptance must be communicated in a specific way, such as by fax or telephone, the postal rule may not apply. Additionally, if the offeree incorrectly addresses the letter of acceptance or is careless, causing delay or failure to communicate, the postal acceptance rule may not apply, as seen in **Getreide-Import GmbH v. Contimar SA Compania Industrial, Comercial y Maritima (1953).**

CONCLUSION

We've considered various forms of acceptance. Whether by words, by actions, through documents, or even by post, what matters most is that acceptance shows a clear intention to be bound. Acceptance may be express, implied, or documentary,but in all cases, it must be unambiguous. And the element of clarity must be there.